

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 12, 2023, at 2:00 p.m.

1. 23-22017-E-13 CJK-1	STANLEY BERMAN Stanley Berman	OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, N.A. 8-17-23 [24]
1 thru 2		

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 17, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.
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HSBC BANK USA, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan fails to cure pre-petition arrearages.

2. Debtor's Plan is infeasible if Debtor were to cure the arrearages.
3. The Plan attempts to modify Creditor's claim which is secured by Debtor's principal residence.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$402,471.92 in pre-petition arrearages. Proof of Claim 9-1. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

As addressed below, the "real fight" appears to be whether there has been a contractual modification entered into by Creditor and Debtor.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's monthly net income is \$434.24. Schedule J, Dckt. 14. Debtor's Plan payment is \$334.24. Debtor will not be able to cure their mortgage arrears of \$402,471.92 based on Debtor's current income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

As addressed below, the "real fight" appears to be whether there has been a contractual modification entered into by Creditor and Debtor.

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$711,531.36, secured by a First deed of trust against the property commonly known as 15342 Carrie Drive, Grass Valley, California. Debtor's Schedules indicate that this is Debtor's primary residence.

Debtor's Nonstandard Provisions, Section 7.01, indicates that Debtor and Creditor have already modified the obligation, but further that there is a dispute about such modification. Plan, Additional Provision ¶ 7.01; Dckt. 15.

The Plan does not provide for determination of any such dispute and adequate protection to be provided pending final determination of such dispute.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by HSBC BANK USA, N.A. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is
XXXXXXX .

2. <u>23-22017-E-13</u> <u>DPC-1</u>	STANLEY BERMAN Stanley Berman	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-16-23 <u>[20]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on August 16, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

A. Debtor failed to appear at the § 341 meeting of creditors.

B. The Plan is overextended.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3).

The Trustee reports that Debtor and Debtor's counsel appeared at the continued Meeting of Creditors on September 7, 2023, and that the Meeting has been concluded. September 7, 2023 Docket Entry Report. This appears to have resolved this ground stated by the Trustee.

Plan Term Exceeds 60

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 369 months due to the Internal Revenue Service and Franchise Tax Board's claims being higher than scheduled for the priority and unsecured portions of their claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor lists the Franchise Tax Board having a priority claim in the amount of (\$22,038) and the Internal Revenue Service having a priority claim of (\$155,000). Schedule E/F; Dckt. 14. However, the California Franchise Tax Board has filed Proof of Claim 4-1 asserting a claim in the amount of (\$22,267.85), of which (\$11,213.92) is filed as a secured claim and \$11,053.93) as an unsecured claim. (\$7,836.38) of the unsecured claim is asserted to be a priority claim.

The Internal Revenue Service has filed Proof of Claim 3-1 in the amount of (\$134,338.68), of which (\$40,466.08) is filed as a secured claim and (\$93,872.60) as an unsecured claim. (\$35,288.37) of the claim is asserted to be a priority unsecured claim.

The Additional Provisions of the Plan, ¶ 7.02, makes reference to the Debtor making payments of \$100.00 a month pursuant to an agreement with the California Franchise Tax Board. No provision is made in the Plan for the Internal Revenue Service secured and priority claims, nor for the California Franchise Tax Board secured claim.

At the hearing, **XXXXXXX**

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

3 thru 5

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 25, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, counsel for Objecting Creditor confirmed for the court that the required Certificate of Service will be used going forward.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Motion to Value Secured Claim is XXXXXXXXXXXXXX

The Motion filed by Larry Dave Walsh ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2018 Dodge Ram 1500 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of

\$18,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a nonopposition on July 11, 2023. Dckt. 19.

CREDITOR'S OPPOSITION

Creditor filed an opposition on July 25, 2023. Dckt. 25. Creditor states the value of the Vehicle should be \$35,743.00. *Id.* Creditor provides a Declaration and Exhibit of a Kelley Blue Book Valuation to substantiate its claim. Declaration and Exhibit D, Dckt. 26. It is not clear to the court who ran the report and whether, based on personal knowledge, it accurately reflects the value of the vehicle.

Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated.

Additionally, pursuant to the Local Bankruptcy Rules, "[m]otions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Creditor is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

DEBTOR'S REPLY

Debtor filed a Reply on August 1, 2023. Dckt. 34. Debtor states Creditor has failed to submit any admissible evidence as to the value of the Vehicle. Debtor directs the court to their Declaration, indicating there are scratches and dings on the door, the Vehicle drifts right, the shocks need to be readjusted, and the right front tire needs to be replaced, makes the Vehicle worth only \$18,000. *See* Declaration, Dckt. 17. Debtor requests their Motion be granted or the court set an evidentiary hearing.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 6, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$24,127.19. Declaration, Dckt. 17.

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support

a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Creditor's Objection states that the value of the vehicle, on the date the petition was filed, was \$35,743.00 and provides a Kelley Blue Book Report supporting this valuation. Dckt. 26. At the hearing, Creditor properly authenticated the Report.

September 12, 2023 Hearing

The court's review of the Docket on September 9, 2023, revealed that no further pleadings have been filed. At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Travis Credit Union ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is **XXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 18, 2023. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is XXXXXXXXXX

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

A. Plan relies on Motion to Value Collateral of Travis Credit Union.

Debtor's Reply

Debtor filed a Reply on August 1, 2023 requesting the Objection be denied.

August 8, 2023 Hearing on the Motion to Value Collateral

The Motion to Value was heard on August 8, 2023. Civil Minutes, Dckt. 40. The court continued the hearing to September 12, 2023 at 2:00p.m. to allow the parties to conduct initial discovery.

The court continues the hearing on the Objection to Confirmation to September 12, 2023 at 2:00 p.m. to be heard in conjunction with the continued Motion to Value Collateral and Secured Claim of Travis Credit Union.

September 12, 2023 Hearing

The court's review of the Docket on September 9, 2023, revealed that no further pleadings have been filed. At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is **XXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 25, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, counsel for Objecting Creditor confirmed for the court that the required Certificate of Service will be used going forward.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is XXXXXXXXXX.
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Travis Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor disputes the replacement value of their collateral.

B. Creditor opposes the interest rate Debtor is proposing.

DISCUSSION

August 8, 2023 Hearing on the Motion to Value Collateral

The Motion to Value was heard on August 8, 2023. Civil Minutes, Dckt. 40. The court continued the hearing to September 12, 2023 at 2:00p.m. to allow the parties to conduct initial discovery.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 3.00%. Creditor's claim is secured by a 2018 Dodge Ram. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.25, plus a 1.25% risk adjustment, for a 9.5% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

Infeasible Plan

Debtor's Plan is infeasible under 11 U.S.C. § 1325(a)(6). Debtor's net income is \$930.25. Schedule J, Dckt. 1. Debtor's Plan payment is \$930.00. With an increase in the value of the vehicle and interest rate, Debtor would need to increase their monthly payment to Creditor. Based on Debtor's net income, increasing a monthly payment is not feasible.

The court continues the hearing on the Objection to Confirmation to September 12, 2023 at 2:00 p.m. to be heard in conjunction with the continued Motion to Value Collateral and Secured Claim of Travis Credit Union.

September 12, 2023 Hearing

The court's review of the Docket on September 9, 2023, revealed that no further pleadings have been filed. At the hearing, **XXXXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Travis Credit Union (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is
XXXXXXXXXXXXXX

6. [23-20566](#)-E-13
[DPC-1](#)

JACKY LIN
Richard Jare

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
4-20-23 [15]**

**APPEARANCE OF RICHARD JARE
– TELEPHONIC APPEARANCE PERMITTED –
REQUIRED FOR THE SEPTEMBER 12, 2023
HEARING.**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on April 20, 2023. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear

at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is sustained and the Debtor's Chapter 13 Plan is not confirmed.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

A. Debtor's Plan fails the liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor has a ½ interest in real property located at 1863 Mammoth Way ("Property"). The Property is not scheduled as Debtor's primary residence.

Debtor claims on their Amended Schedule C, Dckt. 14, that they only have a remainder ½ interest in the Property with their sister from a resulting trust in favor of their mother. However, Trustee reviewed the Deed which indicates that the Property was transferred to a Desiree Lin and Debtor as joint tenants. The Deed does not indicate anything other than a ½ interest in the entirety of the Property.

Debtor is only claiming an exemption in the amount of \$10,000.00 in this Property. Trustee values the Property at approximately \$400,000.00. The Plan proposes to pay unsecured creditors in the amount of \$26,728.24, however, scheduled unsecured claims total \$83,525.76. In a liquidation, unsecured claims would receive payment in full from the Property.

At the hearing, counsel for the Debtor reported that there are trust interests in the property that are not of record. He said possibly there could be an argument that there is a resulting trust. The court addressed with counsel the provisions of 11 U.S.C. § 544(b).

July 11, 2023 Hearing

Nothing further was filed by the Parties prior to the continued hearing. At the July 10, 2023 hearing, counsel for the Debtor reported that additional information has been provided to the Trustee.

Counsel for the Trustee reported that the information was caught by the Trustee's spam filter. The Trustee suggests a briefing schedule.

As addressed at the hearing, the court concluded that economies for the Parties and the Court will be well served by having the Chapter 13 Trustee file supplemental pleadings addressing documentation of the interests in the property, Debtor filing the Opposition, and the Parties being able to focus on what actual issues remain, if any.

The Chapter 13 Trustee shall file and serve his Supplemental Pleadings on or before August 1, 2023. Opposition Pleadings shall be filed and served on or before August 15, 2023, and Reply Pleadings, if any, filed and served on or before August 22, 2023.

Debtor's Preliminary Opposition

Debtor's attorney filed a Preliminary Opposition on August 21, 2023. Dckt. 27. Debtor's attorney informs the court that:

1. The Trustee missed his August 1, 2023 deadline to file his supplemental pleading.
2. As of August 18, 2023, there was nothing additional filed by the trustee, so the trustee is at least 17 days late on the requirement.
3. Debtor's attorney did not file an opposition pleading on or before the August 15, 2023 deadline because he was waiting for a "cue" in which he would see the Trustee's supplemental pleadings in order to narrow the issue for briefing.
4. On Monday August 21, 2023, a partial docket update shows that the clerk had not docketed anything from the trustee.
5. There is a valid question whether the trustee had abandoned the objection to confirmation.
6. There is an article and helpful case law supporting the debtor's contention that the property in question may be in a resulting trust, which does not trigger a liquidation problem. If the property is in a resulting trust, it may not be liquidated to satisfy creditors' claims.

Trustee's Reply to Debtor's Preliminary Opposition

The Trustee filed a response to the Debtor's Preliminary Opposition on August 22, 2023. Dckt. 30. Trustee informs the court that:

1. The Trustee waives any objection regarding Debtor's Preliminary Opposition being untimely.
2. Trustee's Counsel admits to failing to file a timely supplemental pleading, but asks the Court to consider this response to the degree it assists the Court in determining the plan should be confirmed pursuant to the factors in 11 U.S.C. § 1325(a) where the Debtor has the burden of proof.

3. Trustee's Counsel has filed the deed received from Debtor's Counsel as Exhibit 1 to this reply. No certified copy has been obtained where it is not available online.
4. As Trustee understands Debtor's position, Debtor's mother gave to the Debtor and one sibling the mother's house. However, the house may be a resulting trust under California law to the extent that it exists as a life estate to the mother. Trustee contends that only the mother's life estate would be a resulting trust.
5. The mother's life estate value would be worth 72.202% of the value, meaning that in joint tenancy with one sibling, Debtor's value may be 13.899% of the equity value of the property, amounting to \$43,354.46.
6. Where the plan proposes no less than a 32% distribution, and because Trustee estimates the plan will actually pay \$29,727.76, the plan fails liquidation. However, if the Court considers the likely costs of litigation may amount to \$15,000 or more the plan meets liquidation.

Declaration of Neil Enmark

Mr. Enmark filed a declaration in support of the Trustee's Reply to Debtor's Preliminary Opposition on August 22, 2023. Dckt. 31. Mr. Enmark informs the court that:

1. Mr. Enmark has reviewed the Trustee's records and calculates that the Debtor's plan will pay 39.06% to unsecured creditors.
2. The grant deed that the Trustee received reflects that "Yue Ya Liu" gave to the Debtor and to "Desiree Lin" the property as joint tenants on March 23, 2021.
3. After reviewing Debtor's Schedule A/B, Mr. Enmark declares that the Debtor does not live at the property and maintains the Debtor has a remaining $\frac{1}{2}$ interest because of a resulting trust to Debtor's mother. Mr. Enmark does not show that it explains why a resulting trust was created.
4. Mr. Enmark has reviewed various sources to determine how a life estate may be valued and ultimately relied on an actuarial table on the California Law and the Internal Revenue website.
5. Mr. Enmark reviewed the property on a website commonly used for researching real property and it showed the property may be worth up to \$464,000 with a remaining mortgage of \$110,837.
6. In the event of liquidation, Mr. Enmark expects both Debtor, Debtor's sibling, and Debtor's mother to contest it and expects that additional costs will be incurred of at least \$5,000 per person.

7. While asking for a briefing schedule, Mr. Enmark neglected to enter the date, but he discussed the matter with co-counsel who wanted him to handle it on July 12.

Debtor's Dump Document Filed August 21, 2023

On August 21, 2023, the Debtor filed an interesting document with the court titled "Points and Authorities and Exhibits in Opposition to Objection to Confirmation." Dckt. 29. This is an "interesting document." Rather than providing a well thought out points and authorities, a legal explanation of resulting trusts and applicable California law, and educating the court as to the law, the "Points and Authorities" is little more than a work assignment by Debtor directing the court to go and read various cases and articles and "FIGURE IT OUT."

The court summarizes the 31 pages of "Points and Authorities by stated by Debtor to the court for its opposition to the Objection to Confirmation as follows:

- A. Debtor identifies *In re Torrez*, 827 F.2d 1299 for some unstated purpose. P&A, p. 1:15; Dckt. 29.
- B. Debtor identifies *Matter of Torrez*, 63 B.R. 751 (B.A.P. 9th Cir. 1986) for some unstated purpose. *Id.*, p. 1:18.
- C. Debtor identifies *In re Chaleurath*, BAP EC-06-1081 9th Circuit for some unstated purpose. *Id.*, p. 1:21.
- D. Debtor identifies "Resulting Trusts in Bankruptcy What to Do when Your Name Is on Title to the Home of a Family Member" as an article written in August 2017 by Oakland Attorney Andrew J. Christensen for some unstated purpose. *Id.*, p. 1:25-29.
- E. Copies of the following cases are attached:
 1. *In re Torrez*,
 2. *Matter of Torrez*,
 3. *Salven v. Chaleunrath*.

Id., p. 2 - 25
- F. Copy of Resulting Trusts in Bankruptcy: What to Do When Your Name is on Title to the Home of a Family Member. *Id.*, p. 26 - 30.

The Debtor offers no legal analysis or advocacy for opposing the Objection to Confirmation. Rather, Debtor merely dumps "stuff" on the court, smearing the Docket with this pleading and telling the court to "step up, represent the Debtor, and become the Debtor's advocate."

The court declines the instruction to abdicate the role of a judicial officer and instead become an advocate for a party.

The court notes that on August 21, 2023, Debtor filed a pleading titled Preliminary Opposition to Objection to Confirmation, Dckt. 27, that makes reference to the citations in the Dump on the Court, but provides no legal analysis or advocacy.

Debtor appears to completely ignore citation to any California law, analysis of California law, or any cases from the California Supreme Court or the California Courts of Appeal.

September 12, 2023 Hearing

From reviewing the Pleadings, Debtor has clearly demonstrated that Debtor can present no good faith, *bona fide* opposition to the Trustee Objection to Confirmation. This Opposition is so grossly deficient, it appears that Debtor may well be establishing that Debtor is incapable of prosecuting a Chapter 13 case and that this case must be dismissed – possibly with prejudice.

The Objection to Confirmation is sustained and the Debtor’s proposed Chapter 13 Plan is not confirmed.

The court reserves for further proceedings, if so ordered by the court, consideration of whether sanctions should be ordered to be paid by Debtor and counsel for Debtor for the pleadings filed by Debtor in connection with this Objection to Confirmation.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained and the Debtor’s Chapter 13 Plan is not confirmed.

7. <u>22-23225</u> -E-13 <u>DPC-2</u>	FRANKIE HAYDUK Patricia Wilson	CONTINUED MOTION TO DISMISS CASE 5-22-23 <u>[45]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 22, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is ~~XXXXXXXXXXXX~~.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Frankie Hayduk ("Debtor"), has failed to prosecute this case.

DISCUSSION

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 28, 2023. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court notes that Debtor filed a Motion to Approve Settlement Agreement on May 23, 2023. Debtor filed a skeletal Chapter 13 Petition in December 2022 listing an unknown amount for "Potential Compensation for Damages from 2020 Mill Fire in Weed, California" in Schedule A. Dckt. 10. Debtor was offered a gross settlement of \$35,000.00 and amended the A/B Schedule. Dckt. 60. At the June 6, 2023 hearing, Debtor's Motion was denied without prejudice and Debtor stated a new motion would be prepared addressing any issues. Although Debtor appears to be prosecuting issues regarding the settlement, Debtor has failed to put forth any plan since their plan's denial of confirmation.

On June 13, 2023, the court entered its order denying without prejudice the Motion to Approve Compromise. Order; Dckt. 66.

However, counsel for Debtor appeared at the hearing, advising the court that a new motion to approve compromise will be filed.

Based on the apparent prosecution of a settlement, the court continues the hearing on the Motion to Dismiss.

July 19, 2023 Hearing

A review of the Docket on July 15, 2023, indicates that no motion to approve a compromise has been filed. No amended plan has been filed and Debtor is not seeking confirmation of a Chapter 13 plan.

This case was filed on December 13, 2022. While receiving the benefits of Chapter 13, Debtor has chosen not to fulfill Debtor's obligations.

At the hearing, counsel for the Debtor reported the efforts being made and confirmed that a Plan will be filed (which may include the Enslinger provision providing for adequate protection payments while Debtor pursues a loan modification.

The Trustee did not oppose the request for a continuance.

September 12, 2023 Hearing

The court's review of the Docket on September 9, 2023, revealed that no further pleadings have been filed. At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXXXXXXX**.

8. <u>22-22329-E-13</u> <u>MMM-1</u>	JIM HICKERSON Mo Mokarram	MOTION TO MODIFY PLAN 8-8-23 [20]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is XXXXXXX .
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The debtor, Jim Allen Hickerson ("Debtor") seeks confirmation of the Modified Plan because creditor Class 2(A), School Financial Credit Union, had a claim for a 2019 Ford Escape SEL, and the vehicle was totaled in an accident. Declaration, Dckt. 22. Insurance proceeds have subsequently been paid to the Ch. 13 Trustee, which have been used to satisfy Class 2(A)'s claim. Declaration, Dckt. 22. The Modified Plan provides that the remaining unsecured creditors will be paid no less than 7% during the life of the Modified Plan, totaling at least \$23,138.00. Modified Plan, Dckt. 23. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 21, 2023. Dckt. 26. Trustee opposes confirmation of the Plan on the basis that:

1. Certain procedural issues prevent confirmation, such as typographical errors on the certificate of service and a lack of a proper cover sheet accompanying Supplemental Schedules I and J.
2. The modified plan proposes to reduce the percentage paid to unsecured creditors from not less than 55% to not less than 7%.

Dckt. 26.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor filed a Reply to Trustee's Opposition on August 29, 2023. Debtor responds to Trustee's opposition by asserting that:

1. Debtor's attorney, Mo Mokarram, will correct the typographical errors and amend the previous filing by refile the appropriate cover sheet.

2. The Modified Plan states that unsecured creditors shall receive no less than a 7% dividend, but the Plan is likely to pay an 11% dividend to unsecured creditors.

Dckt. 29.

DISCUSSION

Debtor proposes a plan modification that purports to eliminate the secured debt of Class 2(A) due to the secured asset having been destroyed, and the insurance proceeds generated will be used to pay Class 2(A) in full. Declaration, Dckt. 22. However, as the U.S. Trustee notes in his Opposition to Debtor's Motion to Confirm First Modified Plan, Debtor also attempts to modify the Plan so that the unsecured class of creditors receives not less than 7%, a 48% decrease from the original plan's distribution of not less than 55%. Dckt. 26.

Supplemental Schedule I was filed by Debtor on August 29, 2023. Dckt. 31. Debtor states having monthly take home income of \$12,389.00. On Supplemental Schedule J Debtor shows expenses, adjusts for the non-debtor spouses Social Security income, and shows monthly net income of \$1,263. *Id.*

The proposed Modified Plan, Dckt. 23, is funded with a monthly Plan payment of \$800.00, not the apparent \$1,263 of projected disposable income.

Debtor has not given any justification for such a large decrease in plan payments to the unsecured creditors, even if the Modified Plan actually pays closer to an 11% dividend.

Furthermore, Debtor has provided documentation authenticating Debtor's projected disposable income is greater than the \$800.00 a month proposed monthly Plan payment. 11 U.S.C. § 1325(b)(1).

Therefore, the Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtor, Jim Allen Hickerson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

SEPTEMBER 12, 2023 STATUS CONFERENCE

The Status Conference has been continued to 2:00 p.m. on November 7, 2023, by prior order of the court. Order, Dckt. 311.

Capital One Auto Finance, a division of Capital One, N.A. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan fails to pay the applicable prime rate.

DISCUSSION

Creditor’s objections are well-taken.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 6.81%. Creditor’s claim is secured by a 2019 Dodge Ram. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.25%, plus a 1.25% risk adjustment, for a 9.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Capital One Auto Finance, a division of Capital One, N.A. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9 thru 10

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2023. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is xxxxxxx .</p>
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The debtor, Benjamin Krishtopher Verma (“Debtor”) seeks confirmation of the Amended Plan. The Amended Plan provides for \$4,803.00 for month one, followed by seven payments of \$5,200.00 per month, followed by \$11,670.00 for the remainder of the Plan and a 100% dividend to unsecured claims. Amended Plan, Dckt. 37. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on August 28, 2023. Dckt. 43. Trustee does not oppose the Motion, and only notes that Trustee has filed an Objection to Exemptions, noting that Debtor’s exemptions should be amended.

DEBTOR’S AMENDED SCHEDULE C

Debtor filed an second Schedule C on August 28, 2023. Dckt. 42. This would be a Amended Schedule C is a Supplemental or Amended Schedule. The court notes, the new Schedule C now only exempts property under California Code of Civil Procedure § 703.140(b).

At the hearing, **XXXXXXXXXXXX**

CREDITOR'S OPPOSITION

Barry W. Morse, Inc. ("Creditor") holding a secured claim, filed an Opposition on August 28, 2023. Dckt. 45. Creditor opposes confirmation of the Plan on the basis that:

1. The Plan is not feasible.
2. Debtor fails to contribute all disposable income to the Plan.
3. Debtor seeks to modify a loan secured by their primary residence.
4. Creditor disputes the interest rate.

DEBTOR'S RESPONSE

Debtor filed a Response on September 5, 2023. Dckt. 50. Debtor states:

1. They are current in Plan payments.
2. Debtor filed an Amended Schedule C on August 28, 2023.
3. The Motion complies with applicable provisions of the code.

Debtor's Response does not appear to resolve Trustee's concerns.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor addresses doubts as to Debtor's financial reality:

1. Debtor states on their Amended Business Income and Expenses Sheets that they now have a net income of \$12,800, however, it is unclear how this income was derived. Dckt. 41.
2. Debtor's earnings for the six months prior to the petition date was nearly half the current projections.

The court notes, Debtor's Current Monthly Income Details indicate that during the period of October 1, 2022, to March 31, 2023, Debtor's average net income was \$8,156.50, which is roughly 64% of their current income.

3. Although Debtor has a new job, Debtor has not provided enough evidence to support Debtor making almost double of what he previously made.

Debtor offers no testimony as to the “new job” and how “business income” will increase to \$12,800 a month from the \$7,200.00 stated under penalty of perjury on Amended Schedule I. Dckt. 40 at 4-5. Debtor does offer vague testimony in his Declaration of having a “job change,” that “positively impacted my financial situation.” Dec., ¶ 5; Dckt. 36. While testifying in a positive way, few “facts” are provided.

4. Additionally, there may be business, income, and property expenses Debtor has failed to include.

Furthermore, the court notes, Debtor’s Amended Business Income and Expenses state that Debtor’s business’s net monthly income is \$12,800. Dckt. 41. Debtor’s Amended Schedules I and J indicate that Debtor’s current monthly income is only \$7,200. Dckt. 40. Debtor states in their amended schedules that Debtor will be able to increase the monthly payment to \$10,800 in month three; however, Debtor’s Plan indicates they will not increase the payment until month nine, in January 2024.

Debtor is currently in month 6 of the Plan. Debtor’s current payment is only \$5,200. It appears Debtor can contribute an additional \$5,600, beginning month three (June 2023). Debtor’s Schedules and Plan are not consistent.

Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Disposable Income / Not Best Effort

Creditor alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides for the application of all projected disposable income to fund a plan as follows:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor requests a temporary reduction to payments in their bankruptcy Plan due to meeting “immediate expenses.” It is not clear what these expenses are.

Debtor’s May 2023 payment is \$4,803.00. Debtors next payments are \$5,200. Debtor’s Schedule I and J indicates that they could increase their payments to \$10,800 beginning month three (June 2023). Thus, it does not appear that Debtor is contributing all of their disposable income. However, Debtor is still proposing a 100% plan.

At the hearing, ~~XXXXXXXXXX~~

Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$486,864.55, secured by a First deed of trust against the property commonly known as 4414 Bantam Way, Elk Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. Debtor's Plan proposes to reduce the interest rate from 10.99% to 4.0%.

Debtor has not addressed this basis of Creditor's Opposition. Creditor has filed Proof of Claim 5-1. The Attachment to Proof of Claim 5-1 states that the obligation matures July 1, 2025, but there this a "Payoff Date" of May 5, 2023. POC 5-1, p. 6.

A copy of the Note upon which the claim is based is attached to Proof of Claim 5-1 (p. 8-13) and states in paragraph 3 that the balance owed on the Note is due in full on July 1, 2025. Thus, the Note matures prior to the 2027 end of the Plan term. The court has addressed the statutory basis for a debtor providing for modifying a claim secured by a primary residence that matures prior to the completion of the plan and the ability to "modify" the terms of such note. *See, In re Collier-Abbott*, 616 B.R. 117 (Bankr. E.D. Cal. 2020).

With respect to modification of a claim secured by a primary residence of a debtor, when that claim comes due in full before the end of the plan term, several Bankruptcy Code Sections come into play.

(b) Subject to subsections (a) and (c) of this section, the plan may—

...

(2) **modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;**

11 U.S.C. § 1322(b), providing for allowed terms in a Chapter 13 plan (emphasis added). Thus, this section appears to prohibit modification of a claim secured only by the debtor's principal residence. However, continuing in the provisions of 11 U.S.C. § 1322, Congress further provides:

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the **last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.**

11 U.S.C. § 1322(c). Thus, Congress giveth projection for the secured claim for which the primary residence is the collateral, and then in 11 U.S.C. § 1322(c)(2) Congress taketh it away under the specified circumstances. The Debtor can modify a secured claim for which the collateral is the Debtor's primary residence when the claim matures under the contract during the life of the Chapter 13 plan.

11 U.S.C. § 1325(a)(5) provides that for a secured claim, the creditor retain its lien until payment of the debt, with the value not being less the amount of the allowed claim. This requires the creditor to receive the present value (i.e. interest on) the secured claim if paid over time.

At the hearing, the respective counsel addressed the application of 11 U.S.C. § 1322(c)(2) and modification of the secured claim, **XXXXXXX**

Interest Rate

Even if Debtor were to be able to adjust the interest rate, the Plan calls for adjusting the interest rate to 4.00%. This interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. If Debtor were to be able to fix the interest rate, it would be the prime rate in effect at the commencement of the case, 8.00%, plus a 1.25% risk adjustment, for a 9.25% interest rate.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Benjamin Krishtopher Verma ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 28, 2023. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Claimed Exemptions is sustained, and the exemptions under Debtor's Original Schedule C, Dckt. 1, are disallowed in their entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Benjamin Krishtopher Verma's ("Debtor") claimed exemptions under California law because Debtor uses two sets of exemptions under both California Code of Civil Procedure § 703.140(b) and California Code of Civil Procedure § 704. Pursuant to California Code of Civil Procedure § 703.140(a), a debtor can elect either all of the exemptions of the chapter, or they can choose exemptions under § 703.140(b). Section 703.140(a) does not allow a debtor to pick and choose provisions from § 703.140(b) and other code sections. A debtor would elect provisions from § 703.140(b) in their entirety.

DEBTOR'S AMENDED SCHEDULE C

Debtor filed a second Schedule C on August 28, 2023. Dckt. 42. Debtor does identify this as an Amended Schedule, though it must necessarily be such. The court notes, the new Schedule C now only exempts property under California Code of Civil Procedure § 703.140(b).

DISCUSSION

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Debtor has not opposed this Objection. The status of Debtor's exemptions being before this court in this Contested Matter, Debtor cannot unilaterally "void" this proceeding by filing amended schedules.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemptions under Debtor's Original Schedule C, Dckt. 1, under both California Code of Civil Procedure § 704 and § 703, are disallowed in their entirety. This is without prejudice to Debtor filing an amended Schedule C.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 9, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.
--

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in Plan payments.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$185.00 delinquent in plan payments, which represents one month of the \$185.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under

Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on July 28, 2023. By the court's calculation, 46 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan fails to pay the applicable prime rate.

DISCUSSION

Creditor's objections are well-taken.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 6.81%. Creditor's claim is secured by a 2019 Dodge Ram. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit*

Corp., 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.25%, plus a 1.25% risk adjustment, for a 9.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Capital One Auto Finance, a division of Capital One, N.A. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 2, 2023. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

Debtor has failed to serve Creditor Wells Fargo Bank, N.A. and their Counsel Jennifer C. Wong, Esq.. Creditor and their Counsel filed for special notice on November 29, 2022. Dckt. 8. Notice to them was required. At the hearing, **XXXXXXXXXX**

~~The Motion to Value Collateral and/or Avoid Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.~~

The Motion to Value Collateral and/or Avoid Lien and Secured Claim of Department of Health Care Services ("Creditor") is:

(1) Denied without prejudice with respect to valuing the secured claim as provided in 11 U.S.C. § 506(a), and

(2) Denied with prejudice with respect to seeking to avoid the lien pursuant to 11 U.S.C. § 522(f).

The Motion to Value and/or Motion to Avoid Lien was filed by Filiberta Sharon Vasquez (“Debtor”) to value the secured claim of Department of Health Care Services (“Creditor”), or avoid their lien. The Motion is accompanied by Debtor’s declaration. Declaration, Dckt. 25.

Debtor is the owner of the subject real property commonly known as 10491 Hobbie Acres Dr, Redding, California (“Property”). Debtor seeks to value the Property at a fair market value of \$302,500.00 as of the petition filing date.

The court notes, it is unclear whether Debtor is attempting to Value the Collateral or Avoid the Lien. Debtor cites two code sections: § 506(a) and § 522(f). Section 506(a) is used to value the secured claims of creditors. However, in order to utilize § 506(a), Debtor must provide for the claim in the Plan under a Class 2 Creditor. Here, Debtor does not list Creditor as a Class 2 Claim. Plan, Dckt. 3 § 3.08. Additionally, if Debtor were trying to avoid a lien because the lien impairs Debtor’s Homestead Exemption, it does not appear to the court that Creditor’s interest falls within purview of 11 U.S.C. § 522(f).

Review of Grounds Stated With Particularity In The Motion

The court begins with a summary of the grounds stated with particularity (Fed. R. Bank. P. 9013) in the Motion:

- A. The Motion begins stating that the Department of Health Services, Creditor, has filed its claim in the Bankruptcy Case (POC 2-1). Motion, ¶ 2; Dckt. 22.
- B. Debtor has an interest in the Hobbie Acres Drive Property, and it is Debtor’s residence. *Id.*, ¶ 4.
- C. Creditor holds a non-purchase Notice of Lien for medical services provided to Debtor’s deceased grandmother. *Id.*, ¶ 5.

The Motion does not state whether this is an obligation owed by the Debtor, or the Debtor’s deceased grandmother.

- D. The lien encumbers the Property which was inherited by Debtor and in which Debtor currently resides. *Id.*
- E. The Notice of Lien was recorded in Shasta County on September 28, 2016. *Id.*
- F. Wells Fargo Mortgage holds a claim secured by the Property, with the balance owed on the Wells Fargo Mortgage claim being in the amount of (\$73,541.13). *Id.*, ¶ 6.
 - 1. The Wells Fargo Mortgage loan was refinanced in 2020, and Debtor asserts that at that time Wells Fargo Mortgage should have paid the Notice of Lien claim of Creditor. *Id.*

- G. Debtor has claimed a homestead exemption pursuant to California Code of Civil Procedure § 704.730, which exhausts the value in excess of the Wells Fargo Mortgage deed of trust. *Id.*, ¶ 7.
- H. Also, Debtor asserts that Creditor's lien is subject to 11 U.S.C. § 522(f)(2)(A) as it impairs Debtor's claimed exemption. *Id.*
- I. Therefore, Debtor asserts that the value of the "second trust deed held by Dep. Of Health Case Service is \$0.00." *Id.*, ¶ 9.
- J. Further, that upon Debtor obtaining a discharge, the Creditor's claim, "secured by a voluntary lien on debtor's real property, shall be deemed satisfied and the debtor will be entitled to reconveyance of the subject deed of trust." *Id.*, ¶ 10.

At this juncture, the court notes that Debtor appears to have confused the Notice of Lien (which as discussed below is a statutory lien) with deeds of trust. There is nothing presented to the court that Creditor asserts a lien pursuant to a consensual deed of trust.

K. The relief requested at the end of the Motion is stated as follows:

1. An order establishing that the value of Debtor's real property is \$302,500.00.
2. An order determining that Creditor's claim secured by a "voluntary lien" on Debtor's Residence is wholly unsecured.
3. An order extinguishing the lien effective at the conclusion of the Debtor's Chapter 13 Plan upon entry of discharge.

Id., p. 4.

Exhibits Filed By Debtor

The only Exhibit filed by Debtor is Exhibit A, titled Comparable Market Analysis of the Property. Dckt. 26. This analysis has been prepared by Cindy Young. Ms. Young provides her Declaration, Dckt. 24, in which she testifies that it is her opinion that the Property has a value of \$302,500.00. Ms. Young testifies that she has been a real estate brokerage business in the Redding and surrounding areas for more than twenty (20) years.

Debtor does not provide the court with copies of the Notice of Lien at issue, or any other exhibits.

Declaration of Debtor

Debtor has provided in Declaration in support of the Motion. Dckt. 25. Debtor merely testifies that he concurs with the Market Analysis filed as Exhibit A. It appears that Debtor is merely parroting what is said in the Market Analysis and has no opinion as owner of the Property as to its value.

Conspicuously absent from the Declaration is any testimony about the Debtor acquiring the Property, how that relates to when the lien was placed on the Property, and the basis of the Debtor having incurred any liability for the obligation secured by the Notice of Lien.

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on August 29, 2023. Dckt. 28. Trustee opposes on the following grounds:

1. Debtor asserts this Creditor is not secured by failing to schedule it as a secured claim on Schedule D.
2. Debtor is seeking to value the collateral or avoid the lien where Creditor is not provided for in Class 2 of the confirmed Plan.
3. The Motion indicates it has been filed pursuant to 11 USC §506(a) and (d), but then also states Creditor's lien on Debtor's real property is a lien within 11 U.S.C. §522(f)(2)(A) and impairs exemption to which Debtor is entitled under 11 U.S.C. §522(b). It is unclear whether Debtor is attempting to value the collateral or avoid a lien.
4. Creditor holds a lien against Debtor, but Debtor has not provided a copy of the lien and has failed to prove its existence, so it is unclear whether it is a judgment lien that qualifies under this code section to be avoided.
5. Debtor has not complied with Local Bankruptcy Rule 9014-1(d)(3)(B)(iv) where special notice creditors have not been served.

DISCUSSION

As with the Trustee, it is not clear to the court whether Debtor is attempting to value Creditor's secured claim under 11 U.S.C. § 506(a) or avoid their lien under 11 U.S.C. § 522(f). Though Debtor has referenced Bankruptcy Code Sections in the Motion, no points and authorities is provided, nor the language of the Code Sections provided.

Valuing a Secured Claim Pursuant to 11 U.S.C. § 506(a)

The court begins with 11 U.S.C. § 506(a), which provides for valuing a secured claim. The test of this Code Section is well known and is not something that the Debtor would need to quote. In substance, it provides that if the creditor has a lien, then the creditor's claim is a "secured claim" to the extent there is value in the collateral and an allowed secured claim for all amounts in excess of the value of the collateral.

As noted by the Trustee, Debtor has ignored Creditor's claim in the Bankruptcy Schedules, failing to list Creditor's as a secured claim on their Schedule D. Dckt. 1. Rather, Debtor lists the claim as a nonpriority unsecured claim under their Schedules E/F, presumptively having made the 11 U.S.C. § 506(a) ruling for the court. *Id.*

In making the 11 U.S.C. § 506(a) secured claim Motion, Debtor expressly states (admits) that the Notice of Lien was recorded on the Property on September 28, 2016. Motion, ¶ 5; Dckt. 22. Then Debtor refinanced the Wells Fargo Mortgage Loan in 2020 when Debtor inherited the Property from someone (the person is not identified, but may have been the grandmother for whom the Notice of Lien was recorded).

Based on what is presented by Debtor, the court cannot determine that Wells Fargo Mortgage has the senior lien, or whether its refinance with the Debtor is a junior lien to the Notice of Lien.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however. The confirmation of a Chapter 13 Plan modifies the rights and obligations in the bankruptcy debtor-creditor relationship. 11 U.S.C. § 1322(b)(2). Absent a plan providing for a secured claim, however, no rights and obligations of a secured claim are modified.

11 U.S.C. § 506(a) is a tool that allows the court to bifurcate a claim to determine which portion of the claim is secured, and which is unsecured. Section 506(a) is often referred to as a “lien strip;” however, it does not remove a lien from the property. Liens pass through bankruptcy unaffected. *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).

Section 506(a) is not a standalone statute. Bifurcating a claim modifies the contractual obligations in the debtor-creditor relationship. Therefore, in order to use § 506(a), the secured claim must be provided for in the plan, as required by 11 U.S.C. § 1322(b)(2). Although collateral may be overencumbered and have no equity to support the secured portion of the lien, a valuation under § 506(a), absent the claim being provided for in the plan, cannot modify the underlying contractual obligation.

Therefore, without the plan providing for the secured claim of Creditor, upon completion of the plan, the valuation of a claim is null as the contractual obligations cannot be modified. The original terms of the contract, for the full claim amount, will attach to a creditor’s surviving lien.

Homestead Exemption

Debtor asserts that the homestead exemption would apply to the Notice of Lien that secures Creditor’s Claim. Proof of Claim No. 2-1 filed by Creditor includes a Declaration of Pam Seyb, in which a summary of Creditor’s claim and lien rights is provided. This information is summarized by the court as follows:

- A. It is asserted that the heirs of a probate estate become liable for medical services provided under the Medi-Cal Program to the extent of the assets received by the heir from the probate estate, citing to California Welfare and Institutions Code § 140009.5 and unidentified regulations. Dec., ¶ 1; POC 2-1 Attachment.
- B. May Jane Timmons was a Medi-Cal beneficiary who died on February 21, 1991, and for whom Medi-Cal has a claim for \$12,519.17 against her estate. At that time, the estate property was valued at \$30,250.00. *Id.*, ¶ 2.
- C. The probate estate property was inherited by Ms. Timmons three grandchildren. *Id.*

- D. In 1991 a voluntary lien was given for the Medi-Cal obligation, a copy of which is provided as Exhibit A to the Attachment to Proof of Claim 2-1. *Id.*, ¶ 3.
1. The Notice of Lien is signed by a Supervisor in the Department of Health Services and states that a voluntary lien has been granted the Department of Health Services pursuant to Probate Code Sections to secured the \$12,519.17 obligation, plus interest, owed for the Medi-Cal claim.
 2. Debtor, through a representative at the time because Debtor was a minor, is one of three persons granting the lien.

No analysis is provided as to how this voluntary lien, based on statute, is subject to the claimed homestead exemption. California homestead exemption law provides that the property is exempt from sale in specified amounts with respect to enforcing a monetary judgment. See California Code of Civil Procedure § 704.710 et. seq.

At the hearing, ~~XXXXXXXXXX~~

Avoiding a Lien
Pursuant to 11 U.S.C. § 522(f)

In the alternative, Debtor states creditor's lien is "a lien within the range of 11 U.S.C. § 522(f)(2)(A)." Motion, Dckt. 22 ¶ 7. Congress provides in 11 U.S.C. § 522(f)(2)(A):

(f)
...
(2)

(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

- (i) the lien;
- (ii) all other liens on the property; and
- (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

While Debtor references when a lien is considered to impair an exemption, Debtor does not cite the court to the applicable law as to what the effect is of such an impairment. Debtor does state that the lien "impairs an exemption to which the debtors would be entitled under 11 U.S.C. § 522(b)." Motion, p. 3:7-8; Dckt. 22. 11 U.S.C. § 522(b) "merely" provides that a debtor may claim an exemption in property.

The Bankruptcy Code does address when the statutory impairment of an exemption will give a debtor a right to relief, providing for avoiding a lien that impairs an exemption in 11 U.S.C. § 522(f)(1), which states (emphasis added):

(f)

(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, **if such lien is—**

(A) **a judicial lien**, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

(B) **a nonpossessory, nonpurchase-money security interest** in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

The present lien is a voluntary, consensual lien given on the real Property. It is not a “judicial lien”^{FN.1.} as required in 11 U.S.C. § 522(f)(1)(A) and is not a lien on personal property as required in 11 U.S.C. § 522(f)(1)(B).

FN. 1. The term “judicial lien” is defined in the Bankruptcy Code as:

(36) The term “judicial lien” means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

11 U.S.C. § 101(36). The Notice of Lien is for a voluntary lien granted Creditor, not a “judicial lien as defined above.

At the hearing, **XXXXXXXXXX**

Based on the evidence presented by Movant, the court determines that there is not a lien which may be avoided pursuant to 11 U.S.C. § 522(f)(1). With respect to the valuation of the lien of Creditor pursuant to 11 U.S.C. § 506(a), Movant has not presented the court with sufficient evidence for the court to determine the value of the collateral, the Property, which exists for Creditor’s lien.

On the one hand, Debtor states/admits that the loan was refinanced after the Notice of Lien was recorded and should have been paid off through the refinance. This states/admits that the Notice of Lien is senior in priority to the deed of trust and there is sufficient value to secure it in full.

However, while stating/admitting the above, Debtor talks about there being a refinance with apparently the existing lien holder secured by the deed of trust. Thus, it may be that there was a loan modification and possibly that loan modification did not alter the priority of what would have been a senior deed of trust.

Though Debtor has not referenced Proof of Claim 1-1 filed by U.S. Bank, N.A., Trustee, the court has reviewed it. The Deed of Trust attached to Proof of Claim 1-1 has a recording date of October 31, 2005. It states that Filiberta Sharon Vasquez is the borrower. The Deed of Trust further states that the obligation secured by the Deed of Trust is due in full not later than November 1, 2020. A Balloon Note is attached, with Filberta Sharon Vasquez identified as the borrower. POC 1-1, p. 39.

Also attached to Proof of Claim 1-1 is a statement dated November 27, 2022, stating that there are ongoing monthly payments of \$785.93 due from borrower on the loan. This is inconsistent with the balloon payment that was due in 2020.

In the Motion, Debtor states (subject to the certifications arising pursuant to Federal Rule of Bankruptcy Procedure 9011) that she did not inherit the Property until 2020. It is unclear how if the Debtor did not inherit the Property until 2020, then Filberta Sharon Vasquez, who is the Debtor, is signing a note and deed of trust encumbering the Property in October 2005.

Debtor having failed to provide the court with evidence as to the priority of the existing deed of trust and Creditor's lien, the court denies without prejudice the Motion to Value the Secured Claim of Creditor.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion filed by Filiberta Sharon Vasquez ("Debtor" to Value the Secured Claim of the California Department of Health Care Services for which the Notice of Lien was recorded on September 28, 2016, Doc. 2016-0028928, with the Office of the Shasta County Recorder (Creditor's Lien) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion seeking relief pursuant to 11 U.S.C. § 506(a) to value the secured claim of the Department of Health Services is denied without prejudice.

IT IS FURTHER ORDERED that the Motion seeking relief pursuant to 11 U.S.C. § 522(f) to avoid Creditor's Lien is denied with prejudice.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 11, 2023. By the court’s calculation, 32 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

Deutsche Bank National Trust Company (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Ch. 13 Plan does not provide for an interest rate on Creditor’s matured claim.

DISCUSSION

Creditor states that 11 U.S.C. § 1325(a)(5) requires that Debtor pay the full value of Creditor’s secured claim as of confirmation. While the Plan provides for paying the dollar amount of Creditor’s claim as of the commencement of the Bankruptcy Case, it does not provide for any interest – thus Debtor is not paying the present value of Creditor’s secured claim while stretching it out over the five years of the Plan. See, 8 Collier on Bankruptcy ¶ 1325.06[3][b].

Creditor’s objections are well-taken. Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its matured claim with Debtor to 0%. Creditor’s claim

is secured by a Deed of Trust encumbering Debtor's real property located at 642 Fiora Place, Fairfield, California 94534. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

In this case, Creditor notes that the interest rate on the loan is currently 3%, and Creditor suggests 3% is appropriate. Dckt. 16. The court agrees with Creditor and finds that a 3% interest rate on Creditor's matured claim is reasonable. *See* 11 U.S.C. § 1325(a)(5)(B)(ii). Because the Plan purported to lower the interest rate on the claim to 0%, it does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors on August 15, 2023. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Plan is denied.

The debtor, Errol Quock and Irene Wong ("Debtor"), seeks confirmation of the Modified Chapter 13 Plan. The Modified Plan provides Debtor will sell one or both of Debtor's collectible vehicles (RX-7 or Nova) in order to cure delinquency under the current Plan. Plan, Dckts. 82, 84. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 23, 2023. Dckt. 86. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in the current plan, and Debtor may not be able to or is unwilling to make the Plan payments based on the current delinquency.
2. Debtor provided 28 days notice, whereas 35 days notice is required under Local Bankruptcy Rule 3015-1-(d)(1).
3. The interest rate has not been properly fixed and cannot be otherwise ascertained.
4. The Modified Plan does not require sales of Debtor’s antique vehicles, and without the sales, the plan appears to be underfunded by \$198.69 per month.

Dckt. 86.

DISCUSSION

Under Local Bankruptcy Rule 3015-1(d)(1), and in order to comply with the Fed. R. Bankr. P. 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), parties in interest shall be served at least thirty-five days prior to the hearing on a Motion to Modify a Confirmed Plan. In this case, Debtor served parties in interest 28 days prior to the hearing. That failure to provide notice violates Fed. R. Bankr. P. 2002(b) and Local Bankruptcy Rule 3015-1(d)(1).

Furthermore, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor is currently \$4,654.55 delinquent in plan payments under the current Plan. Trustee notes that the Modified Plan calls for the possible sales of Debtor’s antique vehicles to cure the delinquency, but the Modified Plan does not require the sales. Dckt. 86. Without these sales, the Modified Plan appears to be underfunded by \$198.69 per month. Debtor has not provided any declaration or documentation in support of Debtor’s Motion to Modify the Confirmed Plan, and without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Errol Quock and Irene Wong, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

16 thru 17

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors on July 17, 2023. By the court’s calculation, 57 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is denied.</p>
--

The debtor, Jourdon Soonie Slone (“Debtor”) seeks confirmation of the Modified Plan because Debtor experienced a period of unemployment and requests extra time to complete her Ch. 13 Plan. Declaration, Dckt. 68. The Modified Plan provides for an extension of four months to complete the plan, totaling the same monthly payment of \$279.00 required in the previously confirmed Plan. Modified Plan, Dckt. 69. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on August 21, 2023. Dckt. 74. Trustee opposes confirmation of the Plan on the basis that:

1. Trustee cannot accurately assess feasibility of the proposed Modified Plan because Debtor has not filed Supplemental Schedules I and J reflecting Debtor’s current financial situation after acquiring her new job.

2. Although the proposed Modified Plan calls for a four month extension of completing the plan in 52 months instead of 48 months, Trustee's calculations show that the plan may take as long as 57 months to complete.
3. The Modified Plan is not feasible because the proposed plan payment of \$279.00 is insufficient to fund the \$75.00 monthly payment for administrative expenses and Trustee's fees.
4. The Modified Plan calls for a total amount paid of \$13,392.00; however, because the plan likely requires 57 months to complete, Debtor would actually pay a total of \$14,814.98 throughout the life of the plan.
5. There exist procedural issues with the proposed Modified Plan that include improperly reclassifying a Class 2 creditor to Class 1, and not timely filing a Certificate of Service.

Dckt. 74.

DEBTOR'S RESPONSE TO TRUSTEE'S OPPOSITION

Debtor filed a Response on September 5, 2023. Dckt. 77. Debtor responds that:

1. Debtor has made steady or always regular progress toward completion of plan payments, and Debtor only requests a modification due to her lapse in employment in 2022.
2. Debtor simply seeks to extend the Plan so as to make all required payments in full to the secured priority claims in her case, regardless of whether the Plan life extends for 52 months or longer.
3. Debtor has subsequently filed a Certificate of Service, amending that procedural defect.
4. Debtor's attorney, Stephen M. Reynolds, is foregoing any further attorney's fees on this case to allow Debtor to complete the Plan.

Dckt. 77.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to submit documentation proving her ability to make the required monthly plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Accordingly, Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The proposed \$279.00 monthly payments for the balance of the plan term are insufficient to pay the Chapter 13 Trustee's fee, administrative fees, and the Class 2 dividends. Thus, the Plan may not be confirmed.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jourdon Soonie Slone, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

17. [20-24563-E-13](#)
[DPC-3](#)

JOURDON SLONE
Stephen Reynolds

CONTINUED MOTION TO DISMISS
CASE
6-16-23 [57]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is XXXXXXXXXXXX.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Jourdon Slone (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$1,088.02 delinquent in plan payments, which represents multiple months of the \$279.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Though the court authorized the filing of a late Opposition to the Motion (which was filed on July 17, 2023), the court did not “catch” that when preparing the final rulings for the July 19, 2023 calendar.

The court continued the hearing on the Motion to Dismiss to 2:00 p.m. on August 12, 2023, to afford the Debtor the opportunity to prosecute the opposition and the Trustee to determine whether he wants to prosecute this Motion in light of Debtor having filed a Modified Plan and Motion to Confirm.

September 12, 2023 Hearing

At the hearing, XXXXXXXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, the court not “catching” that a late filed Opposition was filed pursuant to an order of the court, the Debtor having filed a Modified Plan and Motion to Confirm which is set for hearing in conjunction with this matter, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is XXXXXXXXXXXXXXXX.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and parties requesting special notice on August 9, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.
--

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. Debtor failed to use the proper form.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$425.00 delinquent in plan payments, which represents one month of the \$425.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Wrong Plan Form

Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 16, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is <u>sustained</u>.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in Plan payments.
2. The Plan may not be feasible.
3. Tax returns have not been filed.
4. The Plan may not be in Debtor's best efforts.

DEBTOR'S RESPONSE

Debtor filed a Reply on September 5, 2023. Dckt. 34. Debtor's counsel argues in the Reply to the Trustee's Objection to Confirmation that:

1. Debtor is current under the Plan.
2. Debtor has filed all missing tax returns.
3. Debtor has amended Form 122C-1.
 - a. Debtor states they were the victim of fraud and did not file the prior two cases.
 - b. Debtor does not have an interest in the real property commonly known as 1724 Chesapeake, Arroyo Grande, California.
 - c. Debtor does not know the debtors listed in the Motion.
4. Debtor's Plan relies on the Amended Proof of Claims of the Internal Revenue Service and Franchise Tax Board. The Plan is not ready for confirmation at this time.

No evidence is provided in support of the Reply. Debtor offers no testimony concerning the contention that the prior two bankruptcy cases were not filed by him. In the current case, it appears that all of the Debtor's signatures are typed "/s/ name" signatures, so the court cannot compare Debtor's signature with those in prior cases.

It is unclear if Debtor's Reply resolves Trustee's concerns. At the hearing, XXXXXXXXXXXX

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$3,345.00 delinquent in plan payments, which represents one month of the \$3,345.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

1. Debtor admitted at the Meeting of Creditors that the real property located at 5501 Gilgunn Way is misclassified as a Class 4, when it should be Class 3.

2. Debtor admitted at the Meeting of Creditors that they receive \$500 per month in rental income. Debtor's Schedule I, however, lists rental income as \$1,645.00. Dckt. 11.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 202x tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Disposable Income / Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor's Form 122C-1 fails to identify rental income for three real properties. Trustee states that with this income included, Debtor is over the median income and needs to complete the entire Form 122C-1.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2023. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required. The court notes, this matter was re-calendared for the September 12, 2023 calendar on September 5, 2023.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The Plan does not appear feasible.
- B. The Plan fails the liquidation analysis.

DISCUSSION

Trustee’s objections are well-taken.

Insufficient Plan Payments / Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor admitted at the Meeting of Creditors that they would not be able to make their July Plan payment. Additionally, they indicated that money was stolen from their bank account. Trustee has not filed a Status Report indicating whether Debtor made their July payment.

At the hearing, **XXXXXXXXXX**

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$5,000.00. *See* Schedule A/B and C (2005 Toyota Corolla), Dckt. 1. Debtor's Plan proposes a 0% dividend to unsecured claims. Therefore, Debtor's Plan fails the liquidation analysis and cannot be confirmed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

21. [23-20667](#)-E-13
[TLA-1](#)

MOLLIE BADGLEY
Thomas Amberg

MOTION TO MODIFY PLAN
8-8-23 [\[27\]](#)

Final Ruling: No appearance at the September 12, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2023. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Mollie Marie Badgley (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on August 16, 2023. Dckt. 33. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor Mollie Marie Badgley (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on August 8, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

22. [23-21853-E-13](#)
[BLG-2](#)

ANDRE SHAVERS
Chad Johnson

MOTION TO CONFIRM PLAN
7-25-23 [\[21\]](#)

Final Ruling: No appearance at the September 12, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2023. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Confirm the Plan is granted.</p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Andre Shavers (“Debtor”), has provided evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on August 25, 2023. Dckt. 43. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Andre Shavers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Chapter 13 Plan filed on July 25, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. [23-21945](#)-E-13
[DPC-2](#)

VIRGIL EVANS
Peter Macaluso

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
7-28-23 [41]

Final Ruling: No appearance at the September 12, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on July 28, 2023. By the court’s calculation, 46 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee, (“Objector”) objects to Virgil Leroy Evan’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on March 7, 2022. Case No. 22-20524. Debtor received a discharge on July 11, 2022. Case No. 22-20524, Dckt. 36.

The instant case was filed under Chapter 13 on June 14, 2023.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on July 11, 2022, which is less than four years preceding the date of the filing of the instant case. Case No. 22-20524, Dckt. 36. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 23-21945-E-13C), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Discharge filed by David P. Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 23-21945-E-13C, the case shall be closed without the entry of a discharge.

24. [23-21341-E-13](#)
[BLG-2](#)

SAMUEL TURKS
Chad Johnson

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON,
DEBTORS ATTORNEY(S)
7-28-23 [\[30\]](#)**

Final Ruling: No appearance at the September 12, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, and Office of the United States

Trustee on July 28, 2023. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Chad M Johnson, the Attorney for Samuel Turks, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 23, 2023, through September 12, 2023. Applicant requests fees in the amount of \$4360.00 and costs in the amount of \$31.08.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include a Task Breakdown and Summary of Services. Dckt. 32. The court finds the services were beneficial to Client and the Estate and were reasonable.

NON-OPPOSITION

The Chapter 13 Trustee filed a Statement of Non-Opposition to the requested fees. Dckt. 36.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Preparation and Administration: Applicant spent 7.5 hours in this category. Applicant consulted with Debtor, prepared the draft petition and accompanying schedules, reviewed and updated the petition and schedules with Debtor, communicated and coordinated with the Trustee, and attended the 11 U.S.C. § 341 meeting.

Motion to Value: Applicant spent 2.2 hours in this category. Applicant drafted, filed, and served the Motion to Value. Applicant reviewed the Tentative Ruling granting the Motion to Value and appeared by phone at the hearing.

First Interim Motion for Fees: Applicant spent 1.2 hours in this category. Applicant prepared an accounting and corresponding First Interim Motion for Fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad M. Johnson	10.9	\$400.00	\$4,360.00
Total Fees for Period of Application			\$4,360.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$31.08 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Printing and Envelopes		\$7.80
Postage		\$16.38
Printing and Envelopes		\$3.30
Postage		\$3.60
Total Costs Requested in Application		\$31.08

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$4360.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

First Interim Costs in the amount of \$31.08 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$4,360.00
Costs and Expenses	\$31.08

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Chad M Johnson, Attorney for Samuel Turks, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of \$4,360.00
Costs and Expenses in the amount of \$31.08,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Final Ruling: No appearance at the September 12, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2023. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Motion to Confirm the Modified Plan is continued to October 3, 2023 at 2:00 pm, to be heard in conjunction with the Objection to Notice of Mortgage Payment Change.

The debtor, Derek L Wolf (“Debtor”) seeks confirmation of the Modified Plan; however, Debtor does not provide the court a reason or evidence to support why a Modified Plan is necessary. Declaration, Dckt. 189. The Motion itself states that circumstances have changed and Debtor is no longer to complete the Plan as originally proposed, Dckt. 187, but there is not sufficient evidence in the form of personal knowledge testimony to support these changed circumstances.

The Motion states:

1. Debtor was approved for pre- and post-petition Mortgage Relief Grants which cured their pre-petition arrears and lowered the principal amount owed and ongoing monthly payment.

2. The remaining dispute is regarding the ongoing mortgage payment, which Debtor's Counsel has filed an Objection to Mortgage Payment Change, set for hearing on August 22, 2023.

The court notes, the hearing on the Objection to Mortgage Payment Change has been continued to October 3, 2023 at 2:00 p.m.

The Modified Plan provides for a thirty-six (36) month plan, with \$16,271.00 to be paid through June 2023, followed by \$900 per month for sixteen (16) months. Modified Plan, Dckt. 191. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 25, 2023. Dckt. 206. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in Plan payments.
2. Debtor's Motion relies on the Objection to Notice of Mortgage Payment Change.
3. Debtor's Schedule I does not appear accurate.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$900.00 delinquent in plan payments, which represents one month of the \$900.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Objection to Notice of Mortgage Payment Change

A review of Debtor's Plan shows that it relies on the court sustaining Debtor's Objection to Notice of Mortgage Payment Change. The court has not yet ruled on the Objection. Without the court ruling on the Objection, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Inaccuracies of Schedule I

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Declaration indicates that Debtor receives rent from his daughter and friend, and earns \$100 per month in odd jobs. Declaration, Dckt. 189 ¶¶ 8, 9. Debtor's Schedule I indicates business income in the amount of \$2,100 and pension income in the amount of \$358.00. Dckt. 193. It is unclear whether Debtor's Schedule I accurately reflects the additional monthly income in rent and odd jobs. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CONTINUANCE OF HEARING

This case has been plagued by a continuing dispute between Debtor and U.S. Bank, N.A., as Trustee, about the Bank's claim, payments made, and application of payments. The court has set a special, in person Status Conference on October 3, 2023, concerning the U.S. Bank, N.A., as Trustee, claim. Debtor has an Objection to the U.S. Bank, N.A., as Trustee, claim and Notice of Post-Petition Mortgage Payment Change.

The court continues the hearing on this Motion to be conducted in conjunction with the Status Conference.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Derek L Wolf ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that hearing on the Motion to Confirm the Modified Plan is continued to **October 3, 2023 at 2:00 p.m.**

26. [22-21314-E-13](#)
[KSR-1](#)

NADIA ZHIRY
Peter Macaluso

26 thru 27

**CONTINUED STATUS CONFERENCE RE:
MOTION TO EXCUSE TURNOVER
AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
5-31-22 [12]**

Final Ruling: No appearance at the September 12, 2023 Status Conference is required.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 7/11/23, it appearing that the remedial work for which the Receiver was seeking relief from the stay has been resolved by the General Contractor hired by the Debtor.

The Status Conference has been continued to 2:00 p.m. on November 7, 2023, by prior order of the court. Order, Dckt. 311.

SEPTEMBER 12, 2023 STATUS CONFERENCE

The Status Conference has been continued to 2:00 p.m. on November 7, 2023, by prior order of the court. Order, Dckt. 311.

JULY 11, 2023 CONTINUED STATUS CONFERENCE

On June 27, 2023, Nadia Zhiry, the Debtor, filed an updated Status Report (Dckt. 267). The court summarizes the updated Status Report as follows:

- A. Debtor has completed all of the repairs and abatements on the Property and has received final approval for all such repairs and abatements from the City.
- B. Debtor has moved to discharge the Receiver and conclude those state court proceedings.
- C. Upon the determination of the Receiver's claim (fees and expenses), the Debtor will provide for payment of those through the Chapter 13 Plan.

The court has modified the automatic stay to allow the Receiver to prosecute the necessary motions for the determination of his fees, costs, and expenses in the Receivership State Court Action. Order; Dckt. 280.

The Status Conference is continued, it appearing that the remedial work for which the Receiver was seeking relief from the stay has been resolved by the General Contractor hired by the Debtor

Final Ruling: No appearance at the September 12, 2023 Status Conference is required.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued to 11/7/23 at 2:00 p.m. by order of the court filed 8/25/23 [Dckt 312]. No appearances required for the 9/12/23 status conference.

<p>The Status Conference has been continued to 2:00 p.m. on November 7, 2023, by prior order of the court. Order, Dckt. 312.</p>

SEPTEMBER 12, 2023 STATUS CONFERENCE

The Status Conference has been continued to 2:00 p.m. on November 7, 2023, by prior order of the court. Order, Dckt. 311.